

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 92/2021, referring to the City Council of (...).

Background

1. On 01/21/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

In particular, the complainant explained that in the framework of a judicial procedure he had become aware of an email with the subject of "upward labor harassment", which the then Chief Inspector of the Urban Guard of (...) would have sent on 07/03/2019 to several people "linked to the public service", among whom were two people from the Autonomous Union of the Police (hereafter, SAP). In the body of the email, the sender stated that he was being harassed at work at the City Council, that one of the harassers was the person making the complaint here, and that he had submitted to the City Council a letter - which he sent as an attachment - extending a "complaint previously filed for upward labor harassment".

The complainant considered that the sending of this email to a multiplicity of people violated data protection regulations, for a series of reasons that can be summarized in the following:

- First of all, he stated that "serious defamations and accusations were made against me" in said email.
- Secondly, it stated that the email contained personal data of the parent of the City Council's security councilor ("it contains personal information subject to data protection, of Mr. xxx -name and surname-").
- Thirdly, it referred to "the very serious breaches of data protection regulations by Mr (...), who received the email in his capacity as mayor of (...)".
- Fourthly, he referred to the "SIP MMEE data protection manual", referring to the Police Information Systems (SIP) of the Department of the Interior of the Generalitat. In particular, it referred to the section that would provide that "it remains absolutely prohibited to facilitate copying, screen printing, or to facilitate the simple display of the terminal screen containing the personal data of any person", and also that "under no circumstances the

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data contained in the SIPs can be provided or communicated to the interested party if it is not through a resolution dictated by the person in charge of the respective file ", and pointed out that the sender of the mail "gives this information" to the recipients of the mail.

The following was indicated in the body of the email subject to complaint:

"I hereby bring to your attention that I have just delivered by check-in, an extension of the complaint made previously for upward labor harassment.

Among other aspects, I refer to the fact that in the month of October I warned in writing that this type of undesirable practice, at first they would go against the Head of the Corps to get him to leave his job, making way to sergeant xxx, one of the perpetrators of the harassment, and that from the Fair of (...), the target would no longer be the Head of Corps but the Councilor of Urban Guard himself, information to which plausibility was not cloned, Well, this second step of the "roadmap" has already become a reality.

I hereby bring to your attention that sergeant xxx (name and surname), taking advantage of his status as accidental head, due to the absence of the head of the titular body, has used the police information system to initiate a search for the family environment of the current security councilor, specifically his father XXX XXX XXX (name and surname). Effectively, on February 13, 2019, at 8:30 a.m., he accessed the SIP, specifically the ONLINE BDSN/ Schengen mass inquiries section, and DGT, to obtain personal data protected by law , without there being a legal cause justifying said access, and without there being any type of annotation in the HELIOS police program."

2. The Authority opened a preliminary information phase (no. IP 92/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 03/26/2021 the City Council of (...) was required to report on several issues related to the events reported, and to provide a copy of the file that had been sent with said mail.

4. On 06/05/2021, after having granted him an extension of the deadline to respond and having reiterated the request on 29/04/2021, the City Council of (...) responded on request through a letter in which he informed, among other issues, about the position of the recipients of the mail, and I wanted to point out that they were staff

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from the City Council ("human resources officers, responsible for the area of origin of the complaint, mayor and union representatives"):

"The people who received the aforementioned mail were the following, with their positions: • xxx xxx xxx (name and surname): Mayor • xxx xxx xxx (name and surname): councilor for public security • xxx xxx (name and surname): Head of Personnel and Organization • xxx xxx (name and surname): Personnel and Organization Technician • xxx xxx (name and surname): union representative • xxx xxx (name and surname): union representative (...)"

The City Council provided a copy of the file that had been sent with the controversial email. It was a letter signed by the same sender of the mail, that is to say, the then Chief Inspector of the Urban Guard of (...), with a stamp of entry at the City Council dated 03/07/2019, addressed to the mayor, the councilor of Urban Guard and Personal, and the Commission of (...). In this letter, the undersigned stated that he was the victim of workplace harassment by other members of the Urban Guard of this City Council, and mentioned the same facts that he mentioned in the body of the email.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the facts reported that are the subject of this file resolution.

2.1. The complainant has filed a complaint against the City Council of (...) due to the fact that the person who sent the controversial mail was the Chief Inspector of the Urban Guard (GU) of this City Council. But from the analysis of the content of said mail, it is inferred that the said inspector would have sent the mail in a private or personal capacity, and not in the exercise of the public functions entrusted to him. Indeed, from the facts reported and the documentation provided, it can be inferred that on 07/03/2019 the then Chief Inspector of the GU sent an e-mail to several people working at the City Council, in which he informed them that he was supplementing a complaint that he himself (sender of the e-mail) had previously submitted for workplace harassment, which, he also said, had not been given likelihood. The complaint would therefore have been submitted in a private capacity, and in the body of the email there was no mention of any data that would allow us to infer that there was a procedure processed by the City Council related to the reason for the complaint, nor that the email, the

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information or the attached file were part of an administrative file. The fact that the sender had used corporate electronic addresses (both his and those of the recipients of the mail) does not prevent the mail from being attributed a private nature, nor, if that was the case, from the mail server of the City Council, since the occasional use of corporate mail for particular purposes is something allowed in the workplace.

Thus, to the extent that it was an email that a person sent in a private capacity to different people about a matter that affected him personally, no responsibility can be attributed to the City Council regarding the communication of data derived from the 'sending of this mail.

2.2. Secondly, with regard to the personal data contained in the disputed mail, it should be noted at the outset that the email essentially contains the sender's statements about what he considers an act of harassment against him by members of the police force. While it is true that the sender refers to the person reporting here as a harasser, this is a manifestation resulting from his conviction and which can be framed in the scope of the personal opinion of the sender of the mail, of the for which no responsibility can be derived from the City Council.

2.3. The complainant also refers to a serious violation of data protection regulations by the then mayor of the City Council of (...). But on this reason for the complaint, it is limited to pointing out that the said mayor was one of the recipients of the mail, a fact that the City Council has confirmed. In this regard, it is sufficient to point out that the mayor's mere access to the content of the mail, due to the fact that he is one of the recipients of the same, and that it would be justified by the exercise of the functions of the position, would not constitute either an offense attributable to the City Council.

2.4. On the other hand, with regard to the recipients of the mail, it should be noted that the mail provided by the complainant states that on 03/07/2019, the Chief Inspector of the PL sent an email to 6 people, among which no SAP person was included. Whereas on 03/01/2020, a SAP person would have forwarded this mail from the Inspector to another SAP person. Regarding this second email, it should be noted that the Authority does not know the person who sent it. However, it cannot be ruled out that it was sent by the Chief Inspector himself, in a private capacity. This would prevent impute to the City Council a communication of data based on the principle of personality that governs disciplinary matters, since it is not known who would have transferred the mail to these people from the SAP.

2.5. Finally, with regard to the reason for the complaint regarding the possible communication of personal data of the parent of a Councilor of the City Council, it should be pointed out that in the aforementioned email only the name and surname of the parent, without disclosing any other personal data. Apart from what has been noted about the personal or private nature of the mail in question, there are no indications that lead to consider that

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this information (the mere identity of the parent) had been extracted from some municipal database, being information that could well be known due to the public relevance of his son (councillor), along with the fact that the municipality and council are small in size. So from the facts reported and the documentation provided, it cannot be inferred that the City Council has breached the duty of secrecy.

In conclusion, the complaint is about events that would have been carried out by a worker of the City Council of (...), but in a private capacity, with respect to which the intervention is not inferred nor, therefore, derived from it responsibility attributable to this City Council. Therefore, apart from what has been indicated, there are facts whose knowledge does not fall within the competence of this Authority, in accordance with the provisions of article 156 of the Statute of Autonomy of Catalonia .

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, any fact that can be attributed to the City Council of (...) and is constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement; b) When the facts are not proven; d) When the person does not exist or has not been able to be identified or responsible persons or appear exempt from responsibility".

Therefore, I resolve:

1. File the actions of prior information number IP 92/2021, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8,

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14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,

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